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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fifth session

SUMMARY RECORD OF THE 1353rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 16 August 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

later: Mr. SHERIFIS

CONTENTS

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (continued)

Australia

ORGANIZATIONAL AND OTHER MATTERS (continued)

Revision of the Committee's general guidelines regarding the form and contents of reports to be submitted by States parties under article 9, paragraph 1, of the Convention (continued)

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The meeting was called to order at 10.10 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Australia (CERD/C/347; HRI/CORE/1/Add.44; CERD/C/55/Misc.31/Rev.1 and Rev.2)

1. The CHAIRMAN invited the Committee to review the situation in Australia, further to its discussion of the issue at its fifty-fourth session in March 1999, when the Committee had adopted decision 2 (54). The Government of Australia had commented on the decision, as was its right under article 9, paragraph 2, of the Convention, and had asked for its comments to be annexed to the Committee's report to the General Assembly. Australia's latest periodic report had been received and was scheduled for consideration by the Committee at its fifty-sixth session, under the regular procedure for consideration of State party reports.

2. Ms. McDOUGALL (Country Rapporteur) reviewed the events which had led to the Committee's adoption of decision 1 (53) in August 1998 and 2 (54) in March 1999. At its previous session, the Committee had discussed invitations it had received from members of the Australian Senate and Parliament (i.e. not official invitations from the Government) to visit Australia (CERD/C/SR.1332, paras. 1-4). It had decided that, provided the Government had no objection, three members of the Committee would undertake the visit. However, the Committee had been informed by a letter from the Australian Permanent Mission in April 1999 that the Government considered that "the proposed visit should not proceed".

3. Since the previous session, the Committee's recommendations in decision 2 (54) had not been acted upon, and there had been no progress in the matter. Indeed, amendments to the Native Title Act were being brought into effect within the jurisdictions of the various States and Territories of Australia. The rights of indigenous Australians were being weakened, and it seemed increasingly likely that they would permanently lose significant land title rights.

4. She invited the Committee to consider a draft decision prepared by herself and six other members, contained in document CERD/C/55/Misc.31/Rev.1. The draft reaffirmed the Committee's decision 2 (54), noted that the Government's comments on that decision would be included in the Committee's annual report to the General Assembly, noted further that the tenth, eleventh and twelfth periodic reports of Australia would be considered at the fifty-sixth session in March 2000 and reiterated the Committee's readiness to visit Australia and to continue its dialogue with the Government.

5. Mr. BANTON (Rapporteur) said that chapter II of the Committee's report to the General Assembly, dealing with prevention of racial discrimination, including early warning and urgent procedures, would consist of an introduction, a section A listing the decisions adopted, including decision 2 (54) on Australia, and a section B giving Australia's comments on the decision. Paragraph 4 of the draft decision should perhaps be amended to read: "comments ... will be annexed to the Committee's annual report ...".

6. Speaking as a member of the Committee, he said that, following the Committee's discussion of the situation in Australia at its previous session, the Attorney-General of Australia, in a press statement dated 19 March, had stated: "The Committee's comments are an insult to Australia". Criticism by other senior figures had included a statement that the Committee had not recorded the substance of the Government's submission, which revealed a misunderstanding of the Committee's mandate. Australian officials had provided the Committee with a great deal of help, particularly on legal issues but it was also true that there had been unprecedented diplomatic representations on the issue. The response from non-governmental organizations (NGOs) had also been considerable.

7. Given the Committee's workload, it might not be able to consider the periodic report of Australia at the next session, which would be most unfortunate in the circumstances. He considered that the Committee should concentrate on information submitted in writing: any visit by members to Australia was purely incidental.

8. The Committee had adopted decision 2 (54), and the Government of Australia had commented on it: the Committee could say no more at present, particularly since Australia's next periodic report had now been submitted. He could support the draft decision now proposed, but he was concerned that delegates to the General Assembly would not gain a sufficient understanding of the situation from those two texts. It was regrettable that the Committee's report could not have been made more informative. Perhaps the Committee might find a way of making the main issues clear, within its procedural constraints.

9. The issues concerned were the following. Firstly, Australia had given effect to its obligations under the Convention through the Racial Discrimination Act of 1975, which was the only national standard for non-discrimination in Australian law. The Native Title Amendment Act devolved many of the responsibilities for issues connected with native title to the level of individual States, so that there was now no one legal instrument which the courts might apply to invalidate discriminatory provisions. Judicial protection had been replaced by administrative protections, and it would become more difficult for many individuals to obtain justice. Australia had thus diminished the obligations it had assumed on ratifying the Convention in a way which he believed to be without parallel.

10. Secondly, native title depended on the traditional laws of the indigenous people, which went back to the pre-colonial period. There was evidence that serious violations of human rights, including genocide, had been committed against the indigenous people during the colonization of Australia. It could take a people several generations to overcome the trauma of such experiences before they could compete on equal terms with those who had escaped them. The Australian representative at the Committee's fifty-fourth session had stated that Australia placed more emphasis on formal equality than substantive equality (CERD/C/SR.1323, para. 61), but formal equality could not reflect the special position of indigenous peoples with respect to native title.

11. In reply to a question by the CHAIRMAN, Ms. McDOUGALL (Country Rapporteur) said that she had no comment to make about any possible financial implications of paragraph 6 of the draft decision, which dealt with a possible visit by Committee members to Australia.

12. Mr. van BOVEN said that the many communications received by the Committee since its March session from NGOs in Australia, the comments from the Australian Government under article 9, paragraph 2, of the Convention and the communication sent to Committee members by the Aboriginal and Torres Strait Islander Social Justice Commission presented and evaluated the amendments to the Native Title Act in many different ways, but he had learned nothing to alter his opinion that the Committee's decision 2 (54) had been justified.

13. The Committee's special interest in the 1975 Racial Discrimination Act and the Native Title Act, and the Committee's own General Recommendation XXIII (51) of 1997 concerning indigenous peoples, had prompted its request, under article 9, paragraph 1, of the Convention, for further information about the subsequent amendments to the Native Title Act. The prevention and early warning procedure was intended not to incriminate a State party, but as a means of monitoring and constructive dialogue.

14. Unlike other members, he had not received the letter from the Australian Permanent Mission, although he had been contacted informally. As he understood it, the Government's position was that the Committee should not participate in complex domestic negotiations which sought to reconcile diverse but legitimate interests. However, if that debate involved the fundamental rights of peoples, it should take into account relevant international treaties, which meant that the Committee, as the custodian of the Convention, should also be involved. He looked forward to continuing the dialogue with the Australian Government during the consideration of Australia's next periodic report in March 2000.

15. As to the role of the General Assembly, it could assess the Committee's work but could not instruct it as a superior or parent body, for the Committee's members were independent experts. If the General Assembly wanted information on the matter under consideration it was readily available in decision 2 (54), in the comments on it by the Australian Government, which would be annexed to the Committee's annual report to the Assembly, and in the summary records of the Committee's discussions over two sessions.

16. Mr. DIACONU noted that the matter was a subject of great contention in Australia itself, where the move towards restrictive legislative amendments had been countered by calls for repeal or revision of the amendments in the hope that an acceptable solution could be reached. The Committee's decision 2 (54) had asked the State party to reopen discussion with the Aboriginal groups, in keeping with its obligations under the Convention. In order to facilitate that dialogue, the Committee should defer its own substantive discussions until the March session in 2000.

17. The draft decision before the Committee, being a procedural one, could be much briefer. He would propose starting with paragraph 3, simply reaffirming its earlier decision, moving on to paragraph 2, which gave the reasons for it, and concluding with paragraphs 4 and 5. He would omit paragraph 1 since the text of the earlier decision was to be found in its report, and he would delete paragraph 6, counter-productive in its insistence that Australia should invite the Committee to visit the country.

18. The CHAIRMAN, speaking in his personal capacity, supported the course proposed by Mr. Diaconu.

19. Mr. de GOUTTES, speaking as a sponsor of the draft decision, said that the draft was itself a compromise text and the fruit of long discussion among the sponsors. The very difficult domestic debate in Australia was not a purely domestic one, as Mr. van Boven had correctly pointed out; and the Committee had to take a position on it and to deplore Australia's criticism of its March decision. He believed the draft decision was balanced, in that it both reaffirmed the March decision and its various provisions and affirmed that the Government's periodic report would be considered in March 2000. Paragraph 6, to which Mr. Diaconu objected, was open, of course, to amendment, but it too was simply a reaffirmation of an earlier Committee decision. The aim had been to reach consensus.

20. Ms. McDOUGALL (Country Rapporteur) said that paragraph 6 did not refer to decision 2 (54) proper but to a decision taken in the course of the debate on 19 March. Its wording was not controversial for it simply expressed the Committee's interest and readiness to visit Australia. She recalled that NGOs had stressed the importance of direct acquaintance with a broader segment of opinion, and that the Committee had also received invitations from the Australian Senate and from members of Parliament, among others. She hoped that the Committee would reaffirm all its earlier positions.

21. Mr. RECHETOV said that, although he had fully concurred in the Committee's earlier decision and agreed that the Committee had to continue to follow developments, he was opposed to highlighting peripheral points rather than the basic issue, which was Australia's regression in the observance of specific human rights of indigenous people. A visit by the Committee was being made into a separate issue in paragraph 6, as if it were on a par with the rights of the Aboriginal people. The paragraph would complicate the continued monitoring of developments, and a visit would achieve nothing but to draw local media attention to a few Committee members and add a further mass of material to the voluminous information already under consideration. He believed that the Committee should examine the whole matter in the context of Australia's periodic report, at which time it would make the necessary criticism.

22. Mr. SHAHI observed that the main points made by Australia in its comments on decision 2 (54) had been its complaint that the Committee had not considered the Government's explanations on their merits, had not grasped the complexity of the issues involved and had inappropriately considered the subject under its emergency procedures, and that the 1998 Native Title Amendment Act was not discriminatory. He endorsed the remarks made by Mr. van Boven in connection with the recent official letter sent to certain members.

23. The Government's contentions calling the Committee's judgement and competence into question would be reproduced in an annex to the Committee's report to the General Assembly but the report itself would give no indication of why the Committee had concluded that there had not been an equitable balance of rights and interests in Australia, and that would be confusing to the Assembly. In the context of the draft decision, he proposed that

paragraph 5 should not simply state that Australia's tenth to twelfth periodic reports were scheduled to be considered during the March session of the following year, but that the Committee would address the State party's comments during its consideration of those periodic reports.

24. Mr. YUTZIS, stressing the importance of debating a subject with serious repercussions for the various Australian parties involved, who had the actual responsibility in the matter, said that the Committee's earlier pronouncements had been appropriate and that the draft decision now before the Committee was balanced, and reasonable in its estimation of what the Committee could do. It could, of course, be revised in the light of the debate. He himself did not agree that paragraph 6 put pressure on Australia or was an expression of self-importance, but thought it should be taken as a gesture of good will.

25. The CHAIRMAN suggested meeting informally in an open-ended working group to try to draft a consensus text.

The meeting was suspended at 11.20 a.m. and resumed at 12.15 p.m.

26. The CHAIRMAN said that the sponsors of the draft decision on Australia (CERD/C/55/Misc.31/Rev.1) had agreed on a revised text, which he read out. That text had been circulated as document CERD/C/55/Misc.31/Rev.2. In paragraph 3, the reference to paragraph 9 (2) of the Convention should be amended editorially to read article 9, paragraph 2. He invited the Committee to comment on the revised draft decision.

27. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted the draft decision on Australia, contained in document CERD/C/55/Misc.31/Rev.2, as it stood without a vote.

28. It was so decided.

29. Mr. Sherifis took the Chair.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Revision of the Committee's general guidelines regarding the form and contents of reports to be submitted by States parties under article 9, paragraph 1, of the Convention (continued) (CERD/C/55/Misc.3; CERD/C/70/Rev.3; HR/PUB/91/1(Rev.1))

30. The CHAIRMAN invited the Committee to resume consideration of the proposed revision of its reporting guidelines. The Committee had before it the text drafted by the sponsors, Mr. Banton, Mr. Garvalov, Mrs. Sadiq Ali and Mr. Valencia Rodriguez (CERD/C/55/Misc.3). On a procedural point raised by Ms. McDOUGALL, he said that the text was being considered before her proposal (CERD/C/55/Misc.11) solely because of the numerical order of document symbols, pursuant to the Committee's Rules of Procedure.

31. With reference to the proposed amendments to article 5, paragraph 10, the Committee had already approved subparagraph (a) in document CERD/C/55/Misc.3. He invited the Committee to consider the remaining subparagraphs.

Subparagraph (b)

32. Subparagraph (b) was adopted.

Subparagraph (c)

33. Ms. McDOUGALL proposed that the words "other vulnerable groups" should be replaced by "groups covered by article 1, paragraph 1, of the Convention", and that the words "the rest of the population" should be followed by a comma and "both women and men".

34. Mr. DIACONU proposed that the words "other vulnerable groups" should be retained, with the addition of "of different ethnic or national origins, including male and female".

35. Mr. ABOUL-NASR said that to include a reference to women and men would render the text cumbersome, since similar references would implicitly be required elsewhere, as well as further possible distinctions - the mention of children, for example. In any case, the Committee's work pursuant to the Convention had to focus on matters of race, not gender. But he had no proposal to make or any strong objection to those put forward.

36. Ms. McDOUGALL said it was important, nevertheless, to ensure that the situation of women was not overlooked. The latest periodic report of Uruguay (CERD/C/338/Add.7) had been a positive example in that regard, having drawn attention, inter alia, to the situation of women in respect of the provisions of article 1, paragraph 1, of the Convention.

37. Mr. AGA SHAHI said he thought the term "other vulnerable groups" too restrictive.

38. Mr. BANTON pointed out that the sentence in question was not restrictive since it began with the words "For example"; it was intended to assist the reporting officer in drafting the report. The original guidelines merely called for the report to cover "political rights", without providing any examples at all to indicate the interests of the Committee under that heading. A reference merely to "groups covered by article 1, paragraph 1, of the Convention" would probably prove less helpful. He would accept Mr. Diaconu's proposal. It was important to be consistent and use the same wording as in the first new paragraph adopted the previous day, to be inserted after paragraph 8, which referred to "migrant workers (both male and female)". The second sentence of subparagraph (c) would thus read: "For example, do members of indigenous peoples and other vulnerable groups of different ethnic or national origin, male and female, exercise such rights to the same extent as the rest of the population?"

39. Ms. McDOUGALL said she regretted that she had not been present for consideration of that new paragraph, where mention had first been made of "male and female". That usage had been superseded and she proposed that the term should be replaced by "women and men". Like Mr. Shahi, she had some doubt as to whether the term "vulnerable groups" was sufficiently inclusive.

40. Mr. YUTZIS, expressing support for the amendment proposed by Ms. McDougall, agreed that the phrase "other vulnerable groups" was indeed restrictive and somewhat ambiguous.

41. Mr. BANTON proposed that the phrase "other vulnerable groups" should be replaced by "persons of different ethnic or national origin", and that, in the interests of consistency, references to "male and female" should be replaced by "women and men" in both subparagraph (c) and the previously adopted paragraph.

42. It was so agreed.

43. Subparagraph (c), as amended, was adopted.

Subparagraph (d)

44. Subparagraph (d) was adopted.

Subparagraph (e)

Subparagraphs (e) (i) and (e) (ii)

45. The CHAIRMAN said that "rights to work" should read "right to work" in subparagraph (e) (i) and in the body of the descriptive subparagraph following subparagraph (e) (ii).

46. Mr. DIACONU, supported by Ms. McDOUGALL, said that "vulnerable groups" should be replaced by "persons of different national or ethnic origin, women and men".

47. Subparagraphs (e) (i) and (e) (ii), as amended, were adopted.

Subparagraph (e) (iii)

48. Ms. McDOUGALL suggested adding the words "by both women and men" at the end of subparagraph (e) (iii).

49. Mr. ABOUL-NASR said that the repeated use of that formulation was problematic, and suggested including a general instruction somewhere in the document calling for the information requested therein to reflect the situation of women and men.

50. The CHAIRMAN suggested that Mr. Banton, Ms. McDougall and other interested members of the Committee should find a general formula which would make it amply clear that the Committee wished to receive information on the respective situations of women and men, and at the same time avoid repetition throughout the document. On that understanding, he took it that the Committee wished to adopt subparagraph (e) (iii).

51. It was so agreed.

52. Subparagraph (e) (iii) was adopted on that understanding.

The meeting rose at 1 p.m.